

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-20 are presently active in this case. The present Amendment amends Claims 1 and 7 to address formal matters. New Claims 13-20 have been added. Support for new Claims 13-20 can be found at least on page 3, 4, and 8 of the specification. No new matter has been added.

The outstanding Office Action rejected Claims 1-12 under 35 U.S.C. § 101. Claims 1-12 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1, 2, 3, 7, 8 and 9 were rejected under 35 U.S.C. § 102(e) as anticipated by Ambiehl et al. (U.S. Patent Publication No. 2002/0122421). Claims 4-6 and 10-12 were rejected under 35 U.S.C. § 103(a) as unpatentable over Ambiehl et al. in view of Honcik (U.S. Patent No. 5,761,625).

Claims 1-12 stand rejected under 35 U.S.C. § 101, based on the proposition that the claimed invention is directed to non-statutory subject matter. The Office Action states that “because the determining of whether a network is deterministic does not produce a tangible result, but rather represents a determined value, it does not meet the requirement for statutory subject matter.” Claims 1 and 7 are amended to overcome the rejection by further indicating the concrete and tangible operations performed therein. Specifically, Claim 1 now recites a process for communication between subscriber stations via packet switching networks wherein the packet switching network is characterized as deterministic if any packet sent on the network from a source subscriber station reaches a destination subscriber station within a limited duration of time. This claimed subject matter clearly extends beyond any abstract idea.

Applicants also draw attention to a long line of supporting case law such as *State Street Bank and Trust Co. v. Signature Financial Group*, 47 USPQ2d 1996 (Fed. Cir. 1998),

In re Allipat, 31 USPQ2d 1545 (Fed. Cir. 1994), and *AT&T Corp. v. Excel Communications*, 50 USPQ2d 1447 (Fed. Cir. 1999). It is clear in reviewing pending Claims 1-12 that those claims recite far more than mere manipulation of an abstract idea and do set forth a concrete, useful and tangible result, in line with the holding of the claims in the above-noted decisions reciting patentable subject matter. Furthermore, Applicants respectfully submit such subject matter is clearly a method or process, which is a proper statutory class. Accordingly, Applicants respectfully request the withdrawal of this rejection.

Claims 1-12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Office Action states that “The claims do not list steps through which the variables and results may be obtained, and there exists no explanation as to how these variables and results will reach a final result, through which a process is enacted.”

Applicants have amended the claims in order to better explain how the variables and results are obtained. Accordingly, Applicants respectfully request the withdrawal of this rejection.

In response to the rejection of Claims 1-3 and 7-9 under 35 U.S.C. § 102(e) as being anticipated by Ambiehl et al., Applicants respectfully traverse. Applicants have perfected priority to French Application 01 14261 filed on November 5, 2001 by complying with the requirements of 35 U.S.C. § 119(a)-(d) within the time period set forth in 37 CFR 1.55(a)(1).¹ Furthermore, Applicants have filed herewith a certified priority document and an English translation. Thus, because Applicants have perfected priority to November 5, 2001 and the Ambiehl et al. reference has a filing date of December 3, 2001, the Ambiehl et al. patent is not prior art. Accordingly, Applicants respectfully request the rejection be withdrawn.

In response to the rejection of Claims 4-6 and 10-12 under 35 U.S.C. § 103 as being unpatentable over Ambiehl et al. in view of Honcik, as noted above, the Ambiehl et al. patent is not prior art, so that the rejection under 35 U.S.C. § 103 based on this patent is, believed

¹ See MPEP 706.02(b).

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traversed and overcome. Accordingly, it is respectfully submitted that Claims 4-6 and 10-12 are patentable.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-12 is earnestly solicited.

Respectfully submitted,

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